

HON. BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SPOTTERRF LLC,
Plaintiff,

v.

EDWARD KNOCH, *et al.*
Defendants,

NO. 3:24-cv-05264-BJR

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION FOR
ATTORNEYS' FEES AND
ENTRY OF JUDGMENT**

I. INTRODUCTION

Plaintiff SpotterRF LLC ("Spotter") filed this lawsuit against Defendants Edward Knoch ("Knoch"), Merritt Rysavy ("Rysavy"), and The Knoch Group, LLC ("Knoch Group") (collectively "Defendants") on April 5, 2024. Defendants moved to dismiss the lawsuit for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6); Plaintiff failed to file an opposition or otherwise respond to the motion.¹ This Court noted

¹On May 2, 2024, Defendants moved this Court to dismiss all claims against them. Dkt. No. 14. This Court struck the motion because Defendants had not satisfied the conferral requirement as set forth in the Court's Standing Order for All Civil Cases ("Standing Order") before filing the motion. Dkt. No. 18. Thereafter, after conferring with Plaintiff's counsel, Defendants renewed their motion to dismiss the complaint. Dkt. No. 21. Per the Standing Order, Plaintiff's response to the motion was due on or before August 12, 2024. When Plaintiff failed to file a response by the due date, Defendants' counsel contacted Plaintiff's counsel to see if the company intended to voluntarily dismiss the case. Plaintiff's counsel responded that he had believed that the motion to dismiss was moot and, therefore, did not require a response. When informed that the motion was not moot, Plaintiff's counsel allegedly told defense counsel that he would file an opposition to the motion by August 28, 2024. When August 28 came and went without a filing, Plaintiff's counsel emailed defense counsel to say that he would file an opposition on August 30. No opposition was

1 Plaintiff's failure to respond to the motion, reviewed the merits of Defendants'
2 arguments, granted the motion to dismiss without prejudice, and the matter was closed on
3 September 5, 2024. Dkt. No. 28.

4 Currently before the Court is Defendants' Motion for Attorneys' Fees and Final
5 Judgment, and once again, Plaintiff has failed to oppose or otherwise respond to the
6 motion. Dkt. No. 29. Having reviewed the motion, the record of the case, and the relevant
7 legal authority, the Court will grant in part and deny in part Defendants' motion. The
8 reasoning for the Court's decision follows.

10 II. BACKGROUND

11 Spotter's complaint against Defendants focused on two alleged employment
12 agreements between Spotter and Defendants, Knoch and Rysavy. Spotter brought eight
13 causes of action, alleging *inter alia* breach of contract, breach of good faith and fair
14 dealing, breach of confidentiality agreements, interference with contractual relationships,
15 and misappropriation trade secrets. Only one of the causes of action—an alleged
16 violation of the Computer Fraud and Abuse Act—did not reference the contractual
17 agreements.

18 Defendants moved to dismiss the Complaint, alleging that the “contract claims
19 against Knoch [] are based on a defunct contract and an unsigned offer letter that is *not* a
20 contract.” Dkt. No. 21, Mot. to Dismiss, at 2 (emphasis in original). Defendants admitted
21 that a contract existed between Spotter and Rysavy but argued that the claims against
22 Rysavy should nevertheless be dismissed because they were based on illegal restrictive
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ever filed. Plaintiff has also failed to respond to Defendants' motion to Compel a Complete Corporate Disclosure Statement, which was due on August 12, 2024.

1 covenants, did not sufficiently identify the allegedly misappropriated trade secrets, and
2 did not sufficiently allege intentional interference with a contractual relationship.

3 This Court applied the *Ghazali* factors and concluded that dismissal without
4 prejudice was appropriate. *See Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (before
5 granting an unopposed motion to dismiss, the court must weigh the following factors:

6 “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
7 manage its docket; (3) the risk of prejudice to defendant; (4) the public policy favoring
8 disposition of cases on their merits; and (5) the availability of less drastic sanctions.”).

9 This Court also determined that the breach of contract claims against Knoch failed as a
10 matter of law because the Complaint failed to plausibly allege that a contract existed
11 between Spotter and Knoch:
12

13 Knoch argues that the breach of contract claims against him fail as a matter
14 of law because there is no valid written contract between him and Spotter
15 for the relevant timeframe. This Court agrees. The complaint attaches two
16 documents, Exhibits A and B, as evidence of an alleged employment
17 agreement between Spotter and Knoch. However, neither document is what
18 the complaint alleges. Exhibit A is not an employment agreement between
19 Spotter and Knoch; rather, it is an agreement between Spotter and Rysavy.
20 Nor is Exhibit B an employment contract between Spotter and Knoch;
21 rather, it is an offer of employment that specifically disavows it is an
employment contract: “This letter is simply a summary of the Company’s
offer of employment to you, provided to you for your convenience, *and
shall not constitute or be deemed in any manner whatsoever, a contract of
employment.*” Thus, the breach of contract claims against Knoch fail as a
matter of law.

22 Dkt. No. 28, Order Granting Mot. to Dismiss, pp.4-5.

23 Defendants now move this Court for an order granting attorneys’ fees pursuant to
24 a provision in the employment contract between Spotter and Rysavy that provides:
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26 **CASE COSTS AND ATTORNEY’S FEES.** If any party shall commence
any action or proceedings against the other in order to enforce the provisions
of this Agreement, or to recover damages as a result of the alleged breach

1 of any of the provisions of this Agreement, the prevailing party therein shall
 2 be entitled to recover all reasonable case costs and fees incurred in
 3 connection therewith against the other party, including reasonable
 attorneys' fees.

4 Dkt. No. 1, Ex. 3, Employment Contract, at pp. 9-10 (bold in original).

5 **III. STANDARD OF REVIEW**

6 Defendants filed the instant motion on September 12, 2024. Per the Court's
 7 Standing Order, Plaintiff's response was due on or before October 3, 2024. As of the date
 8 of this order, Plaintiff has not filed a response or otherwise opposed the motion. Western
 9 District of Washington Local Rules provide: "[e]xcept for motions for summary
 10 judgment, if a party fails to file papers in opposition to a motion, such failure may be
 11 considered by the court as an admission that the motion has merit." Local Civil Rules
 12 7(b)(2). The Ninth Circuit has made clear that a court must examine the merits of an
 13 unopposed motion for summary judgment before granting it. *Henry v. Gill Indus., Inc.*,
 14 983 F.2d 943, 949-50 (9th Cir. 1993). Likewise, in *Ghazali v. Moran*, the Ninth Circuit
 15 set forth five factors a court must consider before granting an unopposed motion to
 16 dismiss. 46 F.3d 52, 54 (9th Cir. 1995). However, the Court is unaware of any
 17 requirement that it must satisfy before granting an unopposed motion for attorneys' fees.
 18 Thus, without further guidance from the Ninth Circuit, this Court will assume that the
 19 unopposed motion has merit but will also consider it in light of the record of this case.

22 **IV. ARGUMENT**

23 **A. Whether Defendants Are Entitled to Attorneys' Fees**

24 Defendants assert that they are entitled to attorneys' fees under the attorneys' fees
 25 provision in the employment contracts between Spotter and Knoch and Rysavy.
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According to Defendants, "[v]irtually all of Spotter's causes of action in its Complaint

1 either depend upon or reference the employment agreements as part of the basis for the
2 claims made. As such, the [attorneys' fees] provision should apply to the entirety of the
3 Complaint.” Mot. to Dismiss at 6. The Court agrees that Defendants are entitled to
4 attorneys' fees and costs related to their successful defense of the claims alleged against
5 Rysavy. However, Defendants argued in their motion to dismiss that no employment
6 contract existed between Spotter and Knoch and that is one of the bases on which the
7 Court granted the motion to dismiss. Defendants cannot now assert that they are entitled
8 to attorneys' fees under a provision of a contract that they previously alleged did not
9 exist. The Court concludes that Defendants are not entitled to recover attorneys' fees and
10 costs related to their successful defense of the claims against Knoch.
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12 **B. What Is a Reasonable Amount of Attorneys' Fees**

13 In calculating the reasonableness of attorneys' fees, courts generally employ the
14 “lodestar” method, calculating “the number of hours reasonably expended on the
15 litigation multiplied by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424,
16 433 (1983); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). Courts
17 look to hourly rates ““prevailing in the community for similar work performed by
18 attorneys of comparable skill, experience, and reputation.”” *Ingram v. Oroudjian*, 647
19 F.3d 925, 928 (9th Cir. 2011). The “relevant legal community” is generally the forum in
20 which the district court sits. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1993).
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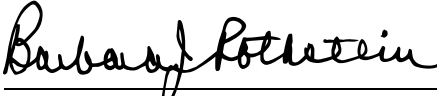
22 Here, Defendants allege that their attorneys have spent 33.4 hours of partner
23 attorney time and 69.6 hours of associate attorney time on this matter, for a total of
24 \$49,895.00 in attorneys' fees, plus \$507.88 in costs. Dkt. No. 30, Dec. of Jack M.
25 Lovejoy, ¶¶ 11-12. Defendants also claim that they will expend another \$2,000 in
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1 attorneys' fees to bring the instant motion and request that amount be added to the total
2 attorneys' fees. The Court finds that generally both the total number of hours expended,
3 and the hourly rate charged, are reasonable. However, because Defendants are not
4 entitled to recover attorneys' fees and costs for the time spent defending against the
5 Knoch claims, the Court directs Defendants to submit a revised bill of costs that sets forth
6 the attorneys' fees and costs associated with defending the Rysavy claims only.
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8 **V. CONCLUSION**

9 Based on the foregoing, the Court HEREBY GRANTS in part and DENIES in
10 part Defendants' motion for attorneys' fees and entry of judgment. Defendants are
11 entitled to attorneys' fees and costs for their successful defense of the claims against
12 Rysavy, but not for their defense of the claims against Knoch. Defendants are directed to
13 submit a revised bill of costs that comports with the terms of this order on or before
14 October 31, 2024.
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16 Dated this 18th day of October 2024.

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19 Barbara Jacobs Rothstein
20 U.S. District Court Judge
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